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Message Text

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ORIGIN OPIC-06

INFO OCT-01 AF-10 ISO-00 EB-08 L-03 COME-00 TRSE-00
H-01 CIAE-00 INR-10 NSAE-00 /039 R

DRAFTED BY OPIC/GC:AKEESEE
APPROVED BY AF/S: DKEOGH
EB/IFD/OIA:DGRANT
----------022492 051645Z /11
P 051640Z JUL 78
FM SECSTATE WASHDC
TO AMEMBASSY LUSAKA PRIORITY

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E.O. 11652: N/A

TAGS: EINV

SUBJECT: PHELPS DODGE CLAIM

REF: LUSAKA 2268

1. OPIC APPRECIATES POST ACTION DESCRIBED REFTEL.

2. RE EXCHANGE CONTROL REQUIREMENTS DISCUSSED PARA 3 REFTEL, OPIC VIEWS BILATERAL AGREEMENT WITH GOZ AS UNCONDITIONALLY ENTITLING USG TO RECEIVE FOR USE IN MEETING LOCAL EXPENSES LOCAL CURRENCY PAID OVER PURSUANT TO AN INVESTMENT GUARANTY ISSUED ON THE BASIS OF A "FOREIGN GOVERNMENT APPROVAL" ("FGA") OF THE INVESTMENT CONCERNED. PDSMI INVESTMENT IN ZAMEFA WAS APPROVED BY SUCH FGA. BILATERAL DOES NOT IN STRICT TERMS EXEMPT PRIVATE ENTITY TRANSFEROR, I.E., PDSMI, FROM REQUIREMENT OF COMPLIANCE WITH LOCAL EXCHANGE CONTROL REGULATIONS, E.G., OBTAINING APPROVAL OF MINFIN PRIOR TO MAKING TRANSFER FOR BENEFIT
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OF A NON-RESIDENT, I.E., USG. PDSMI'S RIGHT TO TRANSFER IS, THEREFORE, CONDITIONAL. OPIC BELIEVES, HOWEVER, THAT BECAUSE OF THE USG BILATERAL RIGHTS NOTED ABOVE, USG'S RIGHT TO RECEIVE QUALIFIED LOCAL CURRENCY IS UNCONDITIONAL AND THAT ANY GOZ REFUSAL (WHICH OPIC ASSUMES WOULD BE EXTREMELY UNLIKELY) TO APPROVE PDSMI REQUEST TO

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TRANSFER CURRENCY COULD BE MOOTED BY INVOCATION OF BILATERAL RIGHT TO RECEIVE CURRENCY.

3. CONSEQUENTLY, IN EVENT GOZ UNWILLING MOVE PDSMI DIVIDEND AND TECH AID KWACHA UP IN REMITTANCE QUEUE, PDSMI REQUEST FOR MINFIN APPROVAL TO TRANSFER KWACHA TO OPIC WOULD SERVE DE FACTO AS LITTLE MORE THAN A GIVING OF NOTICE BY PDSMI.

4. NAIROBI PROBLEMS MENTIONED REFTEL AROSE PRIMARILY BECAUSE (A) TAW FAILED EVEN TO GIVE NOTICE OF TRANSFERS TO GOK AND (B) IT SUBSEQUENTLY PURPOSEFULLY SET OUT TO EMBARRASS USG BY ASSERTING THAT USG RECEIPT OF FUNDS HAD BEEN ILLEGAL. LATTER ALLEGATION, IN VIEW OF TERMS OF USG-GOK BILATERAL, GOK-TAW FGA, AND APPLICABLE PRINCIPLES OF INTERNATIONAL LAW, IS ABSOLUTELY FALSE. ANY ILLEGALITY IN KENYA TRANSFERS AROSE STRICTLY AND SOLELY FROM INVESTOR'S (TAW'S) FAILURE TO ITSELF COMPLY WITH LOCAL REGS. USG COMMITTED NO INFRACTION.

5. OPIC HOPES THIS EXPLICATES EXCHANGE CONTROL SITUATION AND WELCOMES INQUIRIES FROM POST IF FURTHER CLARIFICATION NEEDED. VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CLAIMS, INVESTMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 05 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE169266
Document Source: CORE
Document Unique ID: 00
Drafter: AKEESEE
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780276-0010
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780794/aaaadbgk.tel
Line Count: 85
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 3001fc7a-c288-dd11-92da-001cc4696bcc
Office: ORIGIN OPIC
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
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Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 LUSAKA 2268
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 23 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2113270
Secure: OPEN
Status: NATIVE
Subject: PHELPS DODGE CLAIM
TAGS: EINV, ZA, PHELPS DODGE
To: LUSAKA
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/3001fc7a-c288-dd11-92da-001cc4696bcc
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